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October 3, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals, 445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: In the Matter of Petition of Supra Telecommunications & Information Systems, Inc. ("Supra") Pursuant to Section 252(e)(5) of the Communications Act, WC Docket No. 02-238

Dear Ms. Dortch:

BellSouth filed its Opposition to Supra's Petition in the above referenced proceeding on September 20, 2002. In its Opposition, BellSouth stated that based on information and belief it was BellSouth's understanding that Supra Telecommunications and Information Systems, Inc. ("Supra") would file a complaint in Federal district court challenging whether the BellSouth/Supra interconnection agreement¹ met the requirement of section 251 of the Telecommunications Act of 1934, as amended.² BellSouth files this letter notifying the Commission that Supra did file such a complaint with the United States District Court for the Northern District of Florida on September 23, 2002. A copy of that complaint is attached as Exhibit 1.

As BellSouth stated in its Opposition, 47 U.S.C. § 252(e)(6) provides that preemption by the Commission and judicial review of the Commission's actions "shall be the *exclusive* remedies for a State commission's failure to act."³ The statute then provides that "[i]n any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine

¹ See Exhibit B to BellSouth's Opposition.

² See 47 U.S.C. § 252(e)(6).


³ 47 U.S.C. § 252(e)(6) (emphasis added).

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whether the agreement or statement meets the requirements of section 251 of this title and this section.”⁴

The statute is clear; Supra cannot have it both ways. Either Supra must maintain that the Florida Public Service Commission (“FPSC”) has failed to act, in which case Supra’s exclusive remedy is to seek preemption by the Commission, or Supra must maintain that the FPSC has acted, in which case its remedy is before the United States District Court. By filing an action in the United States District Court, Supra has acknowledged that the FPSC has acted to carry out its responsibilities under section 252. Accordingly, Supra is estopped from seeking a preemption remedy before the Commission and its Petition must be dismissed.

Respectfully submitted,

A handwritten signature in cursive script, reading "Stephen L. Earnest".

Stephen L. Earnest

Attachments

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

SUPRA TELECOMMUNICATION & INFORMATION SYSTEMS, INC., a Florida corporation, Plaintiff, v. BELLSOUTH TELECOMMUNICATIONS, INC., a Georgia corporation, THE COMMISSIONERS OF THE FLORIDA PUBLIC SERVICE COMMISSION, in their official capacities, MARY BANE, individually, Defendants.	Case No. 4:02cv272-RH
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AMENDED COMPLAINT

Plaintiff, SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel, brings this action against the Defendants, BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth"), THE COMMISSIONERS OF THE FLORIDA PUBLIC SERVICE COMMISSION (the "Commissioners" or the "FPSC") and MARY A. BANE ("Bane"), and in support thereof alleges the following:

Introduction

1. Supra brings this action to secure full implementation of the congressionally-mandated process for the opening of local telephone markets to competition under the Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56 (the "1996 Act"). This is also an action brought under 42 U.S.C. § 1983 for the deprivation of Supra's right to procedural due process and equal protection by FPSC and certain individuals; and under 42 U.S.C. § 1985(3) and common law against the FPSC,

BellSouth and certain individuals who conspired to deprive Supra of its federally protected constitutional rights.

2. This case arises out of efforts by Supra to compete with BellSouth in providing local telephone services to Florida consumers and to require BellSouth to fulfill its obligations under the 1996 Act.

3. BellSouth is currently the monopoly or near monopoly provider of both local exchange and exchange access telephone services in most of the State of Florida. Local exchange service is the use of the local network to provide local telephone service within a local calling area to residential and business consumers. Exchange access service is the use of these same local network facilities to provide long distance carriers with the ability to originate and terminate long distance calls by their customers.

4. Supra is a competitive local exchange carrier ("CLEC") attempting to compete with BellSouth to provide both local exchange service and exchange access services. Presently, Supra is BellSouth's largest competitor in the State of Florida.

5. The 1996 Act was enacted to end a pattern by which incumbent local exchange carriers ("ILECs"), such as BellSouth, monopolized the local facilities and services through which consumers place and receive all local exchange and long-distance telephone calls. In place of that pattern, the 1996 Act mandated the creation of a new, more competitive regime and required the removal of legal and economic impediments to local exchange and exchange access competition.

6. Congress recognized that in order to overcome ILEC monopolists' strong economic incentives to delay and impede competition, the 1996 Act had to do more than simply strip away legal barriers to competition. In order to shift monopoly local telephone markets to competition as quickly as possible, the 1996 Act requires BellSouth and other ILECs to enter into interconnection agreements that will allow companies such

as Supra and other "requesting telecommunications carriers" to offer consumers competing local exchange and exchange access services immediately.

7. These interconnection agreements set the terms and conditions upon which Supra and other potential new entrants may use incumbents' services and facilities to offer competing services. Congress found that it would be economically unfeasible for competitors to duplicate the network facilities which the incumbents were able to build during their 100 plus years as a government-approved monopoly. Thus, the 1996 Act defines, in general terms, the obligations and duties of the incumbents.

8. Among other things, the 1996 Act requires incumbents to permit new entrants: (1) to purchase for resale at wholesale rates, without any unreasonable and discriminatory conditions or limitations, any telecommunications service that the incumbent provides at retail; (2) to lease individual network elements such at cost-based rates and to combine such elements to provide competing exchange and exchange access services; and (3) to "collocate", or connect, the competitors' own facilities to the incumbents' networks.

9. The 1996 Act establishes an expedited procedure for new entrants to secure the interconnection agreements with ILECs necessary to create the new competitive regime. Congress directed incumbents to negotiate in good faith with potential competitors seeking interconnection agreements. This good faith requirement is necessary because the ILECs have no incentive to negotiate with its competitors, as the new entrants have nothing the ILECs want. The 1996 Act also provided for compulsory arbitration by state public utility commissions where interconnection agreements could not be reached through negotiation. To ensure that interconnection agreements resulting from the state-conducted arbitrations comply with federal requirements of the 1996 Act and the Federal Communications Commission's ("FCC") implementation rules, Congress

authorized federal court review of completed interconnection agreements approved by state commissions.

10. This action seeks review of certain terms and conditions of an interconnection agreement between Supra and BellSouth (the "Current Agreement") that were imposed by the FPSC and that, as described herein, violate the 1996 Act and the FCC's implementation regulations.

11. Furthermore, the FPSC, in reaching its decisions on the issues before it, committed errors that damaged Supra. Those errors include, but are not limited to the following: (1) depriving Supra of its due process rights in the discovery process; (2) refusing to follow the FPSC's own standards of proof and review; and (3) making numerous findings contrary to the facts in the record and the present state of the law.

Jurisdiction and Venue

12. Because this is a civil action arising under the 1996 Act, a law of the United States, this Court has jurisdiction over this action pursuant to 47 U.S.C. § 252(e)(6) and 28 U.S.C. §§ 1331, 1337.

13. Venue is proper in this District under 28 U.S.C. § 1391(b) in that: (a) all Defendants reside and/or conduct business in this District; (b) a substantial portion of the events and/or omissions which give rise to the claims alleged herein occurred in this District; and (c) the FPSC can only be found in this District. Also, this is an "appropriate Federal district court" within the meaning of 47 U.S.C. § 252(e)(6).

Parties

14. Supra is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. Supra is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of the 1996 Act. Supra is also a CLEC within the meaning of the 1996 Act

15. BellSouth is a Georgia corporation with its principal place of business in Georgia. BellSouth is currently the monopoly provider of both local exchange and exchange access telephone services within its traditional service areas in the State of Florida. Also, BellSouth provides local exchange, exchange access and certain intrastate long-distance services within the State of Florida. BellSouth is an ILEC within the meaning of the 1996 Act.

16. The FPSC is a "state commission" within the meaning of sections 153(41), 251 and 252 of the 1996 Act. The Commissioners are named as defendants in their official capacities.

17. Mary A. Bane is the Executive Director, Florida Public Service Commission ("FPSC"). She is an individual, sui juris, who resides and transacts business in Tallahassee, Florida.

Background

BellSouth's Monopoly Control of the Florida Local Telephone Market

18. BellSouth is the incumbent provider of local telephone service in areas that contain the vast majority of residential and business consumers in the State of Florida. Its local telephone network generally reaches all residences and businesses in its service areas. In order to compete with BellSouth, a local telephone service provider must contract with BellSouth to use, at a minimum, some of BellSouth's network facilities in order to provide service.

19. Although Florida consumers now have more choices in local service providers than they did before the enactment of the 1996 Act (i.e., six (6) years ago), the state of the industry is in disarray. The biggest competitors, long-distance giants seeking to enter the local market such as AT&T and MCI Worldcom, have fallen on hard times. The recent upstarts, such as e.Spire, Northlink, Covad, Teligent, XO, and Global

Crossing, have all filed for bankruptcy protection. Supra, a minority-owned, privately-held company, has emerged as BellSouth's strongest competitor in Florida. It is impractical and uneconomical for Supra or any CLEC to duplicate BellSouth's network facilities. Therefore, it is essential for Supra to have access to such network facilities to provide local and exchange access services to Florida consumers.

The Telecommunications Act of 1996

20. The 1996 Act adopted a comprehensive scheme designed to introduce competition rapidly into historically monopolized telephone markets. In fact, in section 253 of the 1996 Act, Congress expressly authorized the FCC to preempt any state laws that have the effect of prohibiting any entity from offering any interstate or intrastate service. Congress also recognized the practical reality that competition would take years to develop (and in some areas may never develop) if local entry required each new entrant to replicate the local ILEC's infrastructure network. Accordingly, section 251 of the 1996 Act imposes specific obligations on incumbents to allow competitors to interconnect with and use incumbents' existing networks and, in conjunction with section 252 of the 1996 Act, sets federal standards for rates for such use.

21. In addition to imposing substantive duties on ILECs to foster competition in the local exchange and exchange access markets, the 1996 Act establishes an expedited procedure pursuant to which new entrants can obtain the benefits promised by the 1996 Act to compete in the local exchange market. Pursuant to the 1996 Act, any telecommunications carrier may request that the ILEC negotiate an interconnection agreement and, once such a request is made, the incumbent and new entrant are required to negotiate in good faith to reach a final interconnection agreement.

22. Concerned about the willingness of incumbents to voluntarily reach such agreements with potential competitors, Congress authorized either party to petition the state public utility commission to arbitrate any open issues. See 47 U.S.C. § 252(b).

23. As a result, the 1996 Act also provides for regulation of interconnection agreements by state commissions, such as the FPSC. If there are disputes in the negotiation of an interconnection agreement, the parties can request arbitration by the state commission and the state commission is required to resolve such disputes. See 47 U.S.C. § 252(c)(1).

24. After the state commission concludes the arbitration, the parties then submit an “agreement” embodying both the agreed to and arbitrated provisions to the state commission for approval or rejection. See 47 U.S.C. § 252(e)(1). In evaluating the interconnection agreement (or any portion thereof) for approval, the 1996 Act requires the state commission to use different criteria depending upon whether the portion of the agreement was negotiated or arbitrated. See 47 U.S.C. § 252(e)(2).

25. The state commission may only reject *negotiated* portions of an interconnection agreement if the portions discriminate against a telecommunications carrier that is not a party to the agreement or if the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity. See 47 U.S.C. § 252(e)(2)(A).

26. Meanwhile, the state commission may only reject *arbitrated* portions of an interconnection agreement if the portions do not meet the requirements of section 251 of the 1996 Act. See 47 U.S.C. § 252(e)(2)(B).

27. Pursuant to 47 U.S.C. § 252(e)(6), after the state commission has issued an order approving or rejecting the interconnection agreement, either party has a right to file

for judicial review of the agreement in federal district court to ensure that the agreement meets the standards of the 1996 Act

28. Also, because arbitrated terms that are inconsistent with the FCC's implementation regulations also violate the 1996 Act, see 47 U.S.C. §§ 252(c), 252(e)(2)(B), the federal court's reviewing power under section 252(e)(6) includes, *inter alia*, the review of interconnection agreements for compliance with FCC regulations.

Procedural Background

29. On or about June 9, 2000, Supra made a request to negotiate an interconnection agreement with BellSouth in accordance with the 1996 Act. The parties undertook voluntary negotiations, but were unsuccessful in negotiating the agreement.

30. As a result, on or about September 1, 2000, BellSouth filed a petition with the FPSC seeking to arbitrate certain issues related to the interconnection agreement.

31. Supra filed a response to BellSouth's petition, wherein Supra added further issues for arbitration. On September 26 and 27, 2001, the FPSC held an evidentiary hearing. On March 26, 2002, the FPSC issued a Final Order relating to the evidentiary hearing. The FPSC also issued a Second Final Order on July 1, 2002, relating to Supra's Motion for Reconsideration.

32. After the FPSC issued its Second Final Order, a dispute arose between BellSouth and Supra over implementation of the follow-on agreement. In particular, some of the issues initially raised before the FPSC, had been withdrawn before the hearing based upon voluntary agreements between the parties. However, some of the voluntary agreements anticipated further negotiations after the hearing because neither party knew which template would ultimately be used for the follow-on agreement. BellSouth refused to complete negotiations on the follow-on agreement and imposed terms and conditions therein which did not reflect either the parties' prior voluntary

agreements or any FPSC ruling. The FPSC refused to address the issue of BellSouth's failure to comply with prior agreements and forced Supra to accept whatever terms BellSouth proffered without conducting a hearing on those disputed issues. By FPSC Order, Supra was forced to either accept the non-conforming follow-on agreement, or opt into a third-party agreement pursuant to 47 U.S.C. 252(i). By compulsion, Supra executed the follow-on agreement reserving the right to have the same vacated and declared void under federal and state law. On August 22, 2002, the FPSC entered an order approving the follow-on agreement between the two parties.

33. Supra has performed or is excused from performing all conditions precedent, and has retained and agreed to compensate counsel for prosecuting this action.

COUNT I
(FPSC violated the 1996 Act by acting extra-jurisdictionally)

34. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

35. BellSouth, the incumbent local exchange carrier, received a request for negotiation from Supra on June 9, 2000. After negotiations failed, BellSouth filed its petition with the Commission to initiate the arbitration process pursuant to Section 252 on September 1, 2000 – 83 days after receiving a request for negotiation.

36. The 1996 Act, provides that:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

47 U.S.C. § 252(b)(1) (Emphasis added).

37. Furthermore, paragraph 149 of the FCC First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the 1996 Act, CC Docket No. 96-98, provides that:

Because section 252 permits parties to seek mediation “at any point in the negotiation,” and also allows parties to seek arbitration as early as 135 days after an incumbent LEC *receives a request* for negotiation under section 252, we conclude that Congress specifically contemplated that one or more of the parties may fail to negotiate in good faith, and created at least one remedy in the arbitration process.

38. Because BellSouth prematurely filed its petition for arbitration with the FPSC, the FPSC lacked subject matter jurisdiction to address BellSouth’s petition at the time it was filed.

39. On January 29, 2001, Supra filed a Motion to Dismiss BellSouth’s petition and expressly raised the issue that the FPSC lacked subject matter jurisdiction at that time.

40. The FPSC denied Supra’s Motion to Dismiss on the ground that *BellSouth had contacted Supra* on March 9, 2000 to negotiate a new interconnection agreement.

41. However, by misapplying the 1996 Act in an inverse fashion, the FPSC violated the provisions of the 1996 Act. The 1996 Act has strict timing requirements, which provide the basis for the FPSC’s jurisdiction to arbitrate interconnection agreements. Absent such a grant of authority, the FPSC is without jurisdiction to conduct arbitration proceedings.

42. Supra has been aggrieved and damaged as a result of BellSouth’s premature filing of its petition and the FPSC’s extra-jurisdictional acts.

43. As a result of BellSouth’s and the FPSC’s actions, Supra has been aggrieved by the FPSC’s decision as set forth above and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act because the FPSC lacked the subject matter jurisdiction to arbitrate BellSouth’s premature petition;

- b. Set aside the FPSC Final Order and the FPSC's Second Final Order for lack of jurisdiction; and
- c. Order the parties to begin the process of negotiating an interconnection agreement in accordance with the mandates of section 252 of the 1996 Act.

COUNT II

(The FPSC's determination that the parties start negotiations using BellSouth's template contract was a violation of the 1996 Act)

44. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

45. The 1996 Act imposes a duty to negotiate in good faith upon each ILEC. See 47 U.S.C. § 251(c)(1). Further, each ILEC shall provide interconnection with the requesting carrier's network on "rates, terms and conditions that are *just, reasonable and nondiscriminatory*. . . ." See 47 U.S.C. § 251(c)(2)(D).

46. From the date of the filing of BellSouth's petition, the FPSC knew that the parties were in dispute as to which base agreement would incorporate the FPSC's arbitration decisions. In fact, the parties agreed to make the issue of what base agreement would be used an additional issue for resolution by the FPSC at arbitration.

47. In support of its position, Supra presented the FPSC with evidence that BellSouth had refused to start negotiations with Supra based on the Prior Agreement. Also, as part of its response to BellSouth's petition, Supra demonstrated that the practical effect of slight modifications to contract language can have more far-reaching and pronounced effects upon a smaller competitor, like Supra, than upon a monopoly provider like BellSouth. Indeed, historically, the FPSC is aware that there have been times when a party like Supra has lost its position due to slight modifications in language.

48. Nevertheless, the FPSC unfairly refused Supra's request to require the parties to start the negotiations from the skeleton of the Prior Agreement.

49. The FPSC's decision to require Supra to research and utilize an entirely different agreement as a starting point to negotiate a new interconnection agreement with BellSouth, and to force deny the request to utilize the Prior Agreement as a base contract for implementation of issues resolved at arbitration placed Supra in an extremely inferior competitive position. Further, the FPSC's decision was not based on competent substantial evidence in the record and was contrary to the intent and purpose of the 1996 Act.

50. As a result, Supra has been aggrieved by the FPSC's determination that the parties start negotiations using BellSouth's slanted and foreign template contract – instead of starting from the skeleton of the Prior Agreement – and that determination was in violation of the 1996 Act. Thus, Supra is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by requiring the parties to start negotiations using BellSouth's template contract;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT III

(The FPSC violated the 1996 Act and FCC regulations by denying Supra unbundled access to BellSouth's Operating Support System)

51. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

52. Because of the discriminatory nature of BellSouth's CLEC Operating Support System ("OSS") interfaces, Supra sought a contractual provision requiring BellSouth to provide Supra with a download of all of Supra's Customer Service Records

("CSRs"). CSRs contain important customer information, including addresses, phone numbers, etc.

53. Customer Proprietary Network Information ("CPNI") requirements outlined in the 1996 Act, are defined at 47 U.S.C.

§ 222(h)(1) as:

(a) information that relates to the quantity, technical configuration, type, destination, *location*, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (b) *information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.*¹ (Emphasis added.)

The FPSC, without any substantiating record evidence, accepted and adopted BellSouth's position that providing Supra with downloaded CSRs would be contrary to the prohibition in 47 U.S.C. § 222(c)(1) against unauthorized access or disclosure of CPNI. Furthermore, the FPSC found that a download of CSRs would be counter to the FCC's Second Report and Order, 98-27 ¶ 3.²

54. Even though the FCC allows for the dissemination of aggregate customer and subscriber list information, the FPSC made a broad-sweeping finding that a download of CSRs would be in violation of the 1996 Act and the above-stated FCC Order. The FPSC did so even though it found that Supra had presented record evidence that supported Supra's concerns regarding BellSouth's OSS for accessing CSRs.

55. By failing to unbundle its OSS and provide Supra with nondiscriminatory access to its OSS, BellSouth has forced Supra and all CLECs to use its CLEC OSS interfaces. These CLEC OSS interfaces are subject to an inordinate amount of downtime, which deny CLECs unbundled access to BellSouth's OSS.

56. Notwithstanding the FCC's position and the 1996 Act, the FPSC ruled that Supra was not entitled to a download of CSRs.

57. However, the FPSC's unsupported determination violated the interconnection requirements of the 1996 Act and the FCC's implementation orders and regulations. And as a result of the FPSC's determination, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act and FCC regulations by denying Supra unbundled access to BellSouth's Operating Support System;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT IV

(The FPSC violated the 1996 Act by failing to require BellSouth to provide Supra with reasonable interconnection and access to BellSouth's DAML)

58. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

59. The 1996 Act requires that the terms and conditions for interconnection and access to each ILEC's unbundled network elements must be "just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c).

60. Supra complained to the FPSC that BellSouth was charging Supra an unreasonable amount for loop that utilized Digitally Added Main Line ("DAML").

61. Further, DAML technology reduces the cost to ILECs, like BellSouth, who provide service to end-users and consumers, and ILECs are required by the 1996 Act to pass on those cost savings to CLECs like Supra.

¹ Significantly, both the word "location" and paragraph (b) were completely omitted when the FPSC discussed this definition in its March 26, 2002 Final Order. See FPSC Final Order at 44.

² A partial cite to FCC 98-27 ¶ 3 was incorrectly cited as FCC 98-27 ¶ 1 in the Final Order at page 45.

62. These DAML cost savings were not passed on to Supra and the FPSC refused to require BellSouth to reduce the cost that Supra was being forced to pay for a loop when the loop utilized the DAML.

63. Therefore, the FPSC violated the 1996 Act by failing to enforce the fairness and reasonableness provision relating to Supra's interconnection and access to BellSouth's unbundled network elements. As a result, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by failing to require BellSouth to provide Supra with reasonable interconnection and access to BellSouth's DAML;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT V

(The FPSC has violated the 1996 Act by putting unreasonable financial constraints on Supra's ability to challenge BellSouth's bills)

64. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

65. In the FCC's First Report and Order, the FCC recognized that because of the ILECs superior bargaining power, its negotiations with new entrants over the terms of such agreements would be quite different from typical commercial negotiations. See FCC First Report and Order at 15. The FPSC has not adopted this principle.

66. The FPSC's ruling compounded the overbilling strain on Supra by requiring Supra to pay all amounts claimed by BellSouth in advance of any such challenge. And, only after undertaking litigation against BellSouth would Supra be able

to demonstrate the legitimacy of its dispute and to obtain reimbursement from BellSouth. In the interim, BellSouth is allowed to retain Supra's monies – most of which are necessary for Supra to continue operations. Allowing BellSouth to become a repository places BellSouth at a competitive advantage and is contrary to the intent of the 1996 Act.

67. Because the FPSC has failed to observe the intent and purpose of the 1996 Act and has put unreasonable financial constraints on Supra's ability to challenge BellSouth's bills, the FPSC has violated the 1996 Act. As a result, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 by putting unreasonable financial constraints on Supra's ability to challenge BellSouth's bills;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT VI

(The FPSC violated the FCC regulations and the 1996 Act by denying Supra its rights to acquire interLATA transport from BellSouth)

68. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

69. FCC rule 51.319(d) requires BellSouth to provide nondiscriminatory access to interoffice transmission facilities, including transport that crosses LATA boundaries. 47 C.F.R. § 51.319(d). Further, incumbents must provide "all technically feasible transmission facilities, features, functions and capabilities that the requesting telecommunications carrier could use to provide telecommunications service." 47 C.F.R. § 51.319(d)(2)(ii).

Furthermore, the 1996 Act and the FCC's First Report and Order on Local Competition, address the need of a CLEC to obtain unbundled access to interoffice transport, including transport that crosses LATA boundaries. This is evidenced by Order 96-325 ¶449.

70. The FPSC denied Supra its rights under the FCC regulations to acquire transport from BellSouth and reasoned that because section 271 of the 1996 Act precluded BellSouth from offering in-region interLATA services to its *end-use customers*, that BellSouth was exempt from the complying with the above-referenced federal regulation (CFR) section and the FCC implementation orders to provide inter-office transport across LATA boundaries where technically feasible.

71. The FPSC's failure to abide by 47 C.F.R. § 51.319(d) and the FCC regulations, as well as its incorrect reading of section 271 of the 1996 Act, operates as a violation of the interconnection requirements of the 1996 Act. As a result, Supra has been aggrieved by the FPSC's decision to deny Supra its rights to transport from BellSouth and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C.

§§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by denying Supra its rights to acquire interLATA transport from BellSouth;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT VII

(The FPSC violated the 1996 Act by allowing BellSouth to delay the provision of items and network elements to Supra that are necessary for Supra to perform under the Current Agreement)

72. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

73. According to the FPSC's ruling *and in contravention to the 1996 Act*, BellSouth now has the ability to refuse to provide Supra with any new item or network element that is not included in the parties' Current Agreement. This ability to resist is clearly advantageous to BellSouth and allows BellSouth to delay the provision of items or elements to Supra at a time when the item or element is *necessary to provide a service, item, or element that is directly addressed by the parties' Current Agreement*. This ability to delay is inconsistent with the 1996 Act.

74. Further, the FCC requires interconnection agreements to contain language that imposes incentives on ILECs so as to ensure their compliance with the 1996 Act. Specifically, the FCC has addressed the issue of unchecked power in the hands of ILECs in the context of collocation and stated that an incumbent LEC has powerful incentives that, if left unchecked, may influence it to allocate space in a manner inconsistent with its duty, and incumbents also have incentives to overstate security concerns so as to limit physical collocation arrangements and discourage competition. Thus, ILECs require incentives in order to ensure compliance with the 1996 Act.

75. Although the FPSC's ruling expressly found that "BellSouth did not respond in the record to any allegations made by Supra" on this issue, notwithstanding this authority, the FPSC approved the Current Agreement which allows BellSouth to delay the provision of items or network elements that are necessary for Supra to perform under the Current Agreement.

76. Therefore, both the FPSC's determination and the Current Agreement violate the 1996 Act and the FCC's implementation orders and regulations and are arbitrary and capricious. Moreover, the FPSC's determination was not supported by the evidence before the FPSC and is otherwise contrary to law. As a result, Supra has been

aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by allowing BellSouth to delay the provision of items and network elements to Supra that are necessary for Supra to perform under the Current Agreement;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT VIII

(The FPSC violated the 1996 Act by incorrectly denying Supra the right to include interim recovery mechanism language in the Current Agreement)

77. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

78. FCC Order 01-131 provides that the part of the order that "prohibit[s] carriers from invoking 252(i) of the 1996 Act to opt into an existing interconnection agreement *as it applies to rates paid* for the exchange of ISP-bound traffic will be effective immediately upon publication of this Order in the Federal Register." (Emphasis added). As a result, the FCC has only preempted the "rates" in existing interconnection agreements.

79. The Order *did not* preclude the FPSC from allowing Supra to include certain "interim recovery mechanism" language that was already approved by BellSouth and included in BellSouth's interconnection agreement with MCI – specifically section 9.4.7 of the MCI/BellSouth Agreement.

80. Therefore, the FPSC's decision wrongfully denied Supra the right to include identical "interim recovery mechanism" language from the BellSouth-MCI agreement in the Supra-BellSouth interconnection agreement.

81. The FPSC's decision was arbitrary and capricious and contrary the prevailing law and the 1996 Act. Moreover, the Current Agreement is contrary to the interconnection requirements of the 1996 Act. As a result, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by incorrectly denying Supra the right to include interim recovery mechanism language in the Current Agreement;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT IX

(The FPSC violated the 1996 Act by denying Supra the right to audit or otherwise check BellSouth's performance data in the State of Florida)

82. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

83. The intent of the 1996 Act is to level the playing field between the incumbent LEC and CLECs.

84. Supra was trying to combat some of the inequalities that exist between CLECs and ILECs by including a mechanism for ensuring the accuracy and reliability of the performance data that BellSouth is obligated to provide to Supra under the Current Agreement.

85. The FPSC's decision denied Supra the right to validate and audit BellSouth's performance data and effectively allows BellSouth to manipulate the data prior to providing it to Supra.

86. The FPSC's decision -- to effectively leave BellSouth's power unchecked -- is contrary to FCC Order 01-204. Within that order, the FCC recognized that an ILEC has powerful incentives to overstate its concerns with respect to any term or condition that impacts the ILEC's competitive position and, therefore, the ILEC, if unchecked, will act to discourage competition. See FCC Order 01-204.

87. The FPSC erroneously relied upon BellSouth's contention that this issue was among those included in the FPSC's Generic Performance Measurement Docket No. 000121-TP, Order No. PSC-01-1819-FOF-TP. That docket and order involved performance measurements at a regional level and the region-wide measurement permits BellSouth to manipulate the data in other states in order to impact the data in Florida. Supra's request for an audit check on BellSouth's data was state specific.

88. The FPSC's decision and Current Agreement violate the interconnection requirements of the 1996 Act and the FCC's implementation orders and regulations. As a result, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by denying Supra the right to audit or otherwise check BellSouth's performance data in the State of Florida;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT X

(The FPSC violated the 1996 Act by allowing BellSouth to dictate Supra's UNE combinations and by allowing BellSouth to provide Supra with UNEs that are below the quality of BellSouth's UNEs)

89. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

90. FCC Rule 315(b) requires that “[e]xcept upon request, an incumbent LEC [local exchange carrier] shall not separate requested network elements that the incumbent LEC currently combines.”

91. 47 C.F.R. § 51.309 prohibits BellSouth from limiting or restricting Supra’s requests for (or uses of) BellSouth’s unbundled network elements (“UNEs”) in any way that impairs Supra’s ability to offer a telecommunications service “*in the manner the requesting telecommunications carrier intends.*” (Emphasis added.) Similarly, 47 C.F.R. § 51.311 imposes a duty upon ILECs to provide UNEs (as well as the quality of the access to the elements) at a level of quality equal or superior to the level that the ILEC provides to itself.

92. The FPSC’s decision allows BellSouth to effectively dictate Supra’s UNE combinations and allows BellSouth the freedom to not have to provide Supra with UNEs that BellSouth ordinarily or typically provides for itself at TELRIC cost. The FPSC’s decision and the Current Agreement violate the interconnection requirements of the 1996 Act. Moreover, the FPSC’s decision is also contrary to the FCC’s implementation orders and regulations and, thus, is arbitrary and capricious. As a result, Supra has been aggrieved by the FPSC’s decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by allowing BellSouth to dictate Supra’s UNE combinations and by allowing BellSouth to provide Supra with UNEs that are below the quality of BellSouth’s UNEs;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC’s implementation orders and regulations, and the decision of this Court; and

- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XI

(The FPSC violated the 1996 Act by allowing BellSouth to charge Supra for a separate access terminal to serve multi-tenant environments)

93. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

94. The FPSC decision imposes an obligation upon Supra to pay the inflated rates dictated by BellSouth for a separate access terminal that allows Supra to obtain access to a multi-tenant environment. As a result, the FPSC decision violates the FCC UNE Remand Order (Order 99-238), which specifies that ILECs shall provide a single point of interconnection for CLECs with respect to multi-tenant environments.

95. Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by allowing BellSouth to charge Supra for a separate access terminal to serve multi-tenant environments;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XII

(The FPSC violated the 1996 Act by denying Supra the right to obtain EELs as cost-based UNEs)

96. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

97. FCC Rule 319(c)(2) and the FCC's Third Report and Order (at ¶¶ 241-300) permit Supra to obtain Enhanced Extended Loops ("EELs") as a cost-based UNE.

98. However, the FPSC's decision wrongfully denied Supra its right to obtain EELs as cost-based UNEs. As a result, the FPSC's decision is in violation of the interconnection requirements of the 1996 Act and the FCC's implementation orders and regulations.

99. Supra has been aggrieved by the FPSC's wrongful denial of Supra's right to obtain EELs as cost-based UNEs and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by denying Supra the right to obtain EELs as cost-based UNEs;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XIII

(The FPSC violated the FCC regulations and the 1996 Act by denying Supra the ability to charge a tandem switching rate after installation of its switches)

100. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

101. FCC Rule 51.711(a)(3) permits Supra to charge a tandem-switching rate if Supra's switches serve a geographic area comparable to those served by BellSouth.

102. The record at arbitration demonstrated that BellSouth refused to comply with prior FPSC orders relating to collocation and that BellSouth had denied and delayed Supra from collocating its switches.

103. Further, the FPSC's ruling denied Supra the right to charge the tandem rate once Supra completed the installation of its switches, despite BellSouth's conduct.

That ruling was not only in violation of the FCC implementation orders and regulations, it was also contrary to the intentions of the 1996 Act.

104. As a result of the FPSC's decision, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by denying Supra the ability to charge a tandem-switching rate after installation of its switches;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XIV

(The FPSC violated the 1996 Act by allowing BellSouth to discriminate against Supra (and other CLECs) with respect to access to CLEC OSSs)

105. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

106. The 1996 Act requires that ILECs provide CLECs with non-discriminatory access to network elements. This duty encompasses more than an obligation to treat carriers equally. FCC Local Competition Order ¶ 315.

107. Interpreting the terms of this duty in light of the 1996 Act's goal of promoting local exchange competition necessarily leads to the conclusion that BellSouth should provide quality access to BellSouth's OSS (i.e., the same quality that BellSouth's retail division utilizes). However, the FPSC's decision did not require or otherwise enforce such equality.

108. Instead, the FPSC's decision effectively granted BellSouth an exemption from its legal obligations to meet its duties under the 1996 Act by allowing BellSouth to

provide an inferior OSS to Supra. Furthermore, BellSouth has improperly separated the OSS that it provides to CLECs (i.e., an already-combined network element) before leasing it to Supra. BellSouth's separation of the OSS, without Supra's request, is a violation of FCC Rule 315(b), which states that "[e]xcept upon request, an incumbent LEC [local exchange carrier] shall *not* separate requested network elements that the incumbent LEC currently combines." (Emphasis added).

109. The FPSC's decision permits BellSouth to continue to provide its inferior LENS OSS interface to all CLECs in contravention to the 1996.

110. Because the OSS that BellSouth provides to CLECs is inconsistent with the 1996 Act and FCC implementation orders, and the FPSC has not corrected BellSouth's discrimination against CLECs, the FPSC's decision and the Current Agreement violate the interconnection requirements of the 1996 Act and the FCC's implementing orders and regulations. As a result, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by allowing BellSouth to discriminate against Supra (and other CLECs) with respect to access to CLEC OSSs;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XV

(The FPSC violated the 1996 Act by deciding to not make BellSouth provide Supra with SMDI or Standard Message Desk Interface-Enhanced as a feature, function, or capability of the unbundled local switch)

111. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

112. The record at arbitration unequivocally demonstrated that BellSouth agreed that Standard Message Desk Interface ("SMDI") signaling minus the data link was a feature, function, or capability of the Unbundled Local Switch ("ULS") port that serve the caller and voice lines. BellSouth also agreed that the data link would need to be provisioned separately. In addition, the FPSC also found that SMDI is a feature of the ULS.

113. However, despite the evidence adduced at arbitration and the FPSC's finding, the FPSC ultimately decided that BellSouth was under no obligation to provide SMDI or Standard Message Desk Interface-Enhanced ("SMDI-E") as a feature, function and capability of the ULS unbundled network element. Such an omission by the FPSC is directly contrary to 47 C.F.R. § 51.309(c) and the record evidence.

114. Therefore, the FPSC's decision and the Current Agreement violate the interconnection requirements of the 1996 Act and the FCC's implementing orders and regulations, and are in contravention to the record that was before the FPSC. As a result, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by deciding not to make BellSouth provide Supra with SMDI or Standard Message Desk Interface-Enhanced as a feature, function, or capability of the unbundled local switch;

- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XVI

(The FPSC violated the 1996 Act by virtue of its failure to require BellSouth to provide Supra and other CLECs with the capability of submitting electronic service orders)

115. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

116. The 1996 Act requires BellSouth to provide Supra with the capability to submit electronic orders for all services and elements.

117. However, although Supra requested this from BellSouth and BellSouth refused, the FPSC decided to not require BellSouth to provide this capability to Supra. Such a denial was contrary to the record evidence and the 1996 Act.

118. FCC Rule 51.313 allows Supra to obtain the same quality access to BellSouth's UNEs as that had by BellSouth and there is no dispute that OSS is a UNE. See, e.g., 47 U.S.C. § 153(29); FCC's Local Competition Order ¶¶ 224, 262, 278, 282, 285, 312-13, 315, 316, 516-521, 523, 525; 47 U.S.C. § 251(c)(2); UNE Remand Order; FCC's Third Report and Order ¶¶ 433-34, 523; and 47 C.F.R. §§ 51.307, 51.309, 51.311, 51.313.

119. BellSouth's retail operations submit electronic orders. However, Supra and other CLECs submit Local Service Requests ("LSRs") to BellSouth and then BellSouth's agents manually process these LSRs into electronic service orders. The two different systems (one for BellSouth and a second, different system for CLECs) are not only completely separate, but are in no way equal.

120. The FPSC's failure to require BellSouth to provide Supra and other CLECs with the capability of submitting electronic service orders is a violation of the 1996 Act. Therefore, the FPSC's decision and the Current Agreement violate the interconnection requirements of the 1996 Act and the FCC's implementation orders. As a result, Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act virtue of its failure to require BellSouth to provide Supra and other CLECs with the capability of submitting electronic service orders;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XVII

(The FPSC violated the 1996 Act by allowing BellSouth to continue intervening in the service ordering process for Supra's customers)

121. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

122. The 1996 Act requires BellSouth to provide CLECs with access to BellSouth's OSS in a non-discriminatory fashion. However, the FPSC's decision effectively permits BellSouth to intervene in the service ordering process for any Supra order that BellSouth unilaterally considers as complex.

123. Specifically, BellSouth's manual intervention may occur *after* BellSouth has converted Supra's LSR into an electronic service order. At that point, BellSouth has the ability to unilaterally decide whether it wishes to intervene in the ordering process. Any intervention by BellSouth in the ordering process has the effect of causing further delay – which translates into customer dissatisfaction for Supra's customers.

124. The evidence demonstrates that BellSouth experienced a 0% “mechanized fallout” of its service orders – whether complex or not. Allowing BellSouth to pick and choose when it wants to manually intervene in a service order after its own agents have already translated the LSR to a service order is anti-competitive and contrary to the purpose of the 1996 Act.

125. The FPSC’s ruling and the Current Agreement do not prohibit BellSouth from continuing this manual intervention.

126. Because the FPSC did not limit BellSouth’s ability to manual intervene (which causes delay that is harmful to Supra), the FPSC’s decision and the Current Agreement violate the interconnection requirements of the 1996 Act and the FCC’s implementation orders and regulations. As a result, Supra has been aggrieved by the FPSC’s decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by allowing BellSouth to continue intervening in the service ordering process for Supra’s customers;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC’s implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XVIII

(The FPSC violated the 1996 Act by denying Supra a download of databases that Supra could use as an alternative to BellSouth’s CLEC OSS)

127. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

128. The 1996 Act requires BellSouth to provide CLECs with access to BellSouth’s OSS in a non-discriminatory fashion.

129. The record evidence in the arbitration demonstrated that BellSouth's OSS interface (LENS) experienced excessive downtime as a result of LENS's inability to handle the number of LSRs being submitted on a daily basis. However, BellSouth's own retail agents do not experience any downtime when submitting their own electronic service orders for BellSouth's own customers.

130. As a result of this disparate treatment, Supra requested that BellSouth provide Supra with downloads of the RSAG, LFACS, PSIMS and PIC databases, which would allow Supra to provide more efficient and meaningful service to its customers while LENS is down or otherwise unavailable. These requested download databases (which are available to BellSouth but not Supra) provide BellSouth with additional information that is currently not available to CLECs through LENS.

131. BellSouth refused to provide Supra with the requested downloads and the FPSC's decision and the Current Agreement fail to require BellSouth to provide Supra with these downloads.

132. As a result, the FPSC's decision and the Current Agreement violate the interconnection requirements of the 1996 Act and the FCC's implementation orders and regulations. Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by denying Supra a download of databases that Supra could use as an alternative to BellSouth's CLEC OSS;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XIX

(The FPSC violated the 1996 Act by failing to require BellSouth to prevent delay and to revise its system to provide meaningful explanations for rejected LSRs)

133. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

134. The 1996 Act requires BellSouth to provide CLECs with access to BellSouth's OSS in a non-discriminatory fashion.

135. Supra is required to submit manual (i.e., non-electronic) LSRs to BellSouth, which are then converted by a BellSouth agent into a service order that the BellSouth agent resubmits electronically. Manual submission takes more time than electronic submission. Also, this process is further delayed when LENS rejects one of Supra's LSRs without providing an accompanying explanation or stating what must be done to successfully resubmit the LSR.

136. Providing an accompanying explanation would prevent the multiple resubmissions of the same LSRs and would reduce costs. It would also improve the quality of customer service that Supra could provide to its customers.

137. Neither the FPSC's decision nor the Current Agreement provide Supra with the right to require BellSouth to identify why an LSR was rejected by LENS (BellSouth's OSS interface).

138. Therefore, the FPSC's decision and the Current Agreement violate the interconnection requirements of the 1996 Act and the FCC's implementation orders and regulations. Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by failing to require BellSouth to prevent delay and to revise its system to provide meaningful explanations for rejected LSRs;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XX

(The FPSC violated the 1996 Act by failing to require BellSouth to drop/purge Supra's LSRs in the same manner in which BellSouth drops/purges its own electronically submitted service orders)

139. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

140. The 1996 Act requires BellSouth to provide CLECs with access to BellSouth's OSS in a non-discriminatory fashion.

141. The FPSC's decision and the Current Agreement fail to require BellSouth to only drop or purge a Supra LSR in the same manner in which BellSouth drops or purges its own electronically submitted service orders.

142. The undisputed evidence at arbitration demonstrated that BellSouth was dropping or purging Supra LSRs in a fashion that was different from BellSouth's own service orders.

143. As a result, the FPSC's decision and the Current Agreement violate the interconnection requirements of the 1996 Act and the FCC's implementation orders and regulations. Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C.

§ 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by failing to require BellSouth to drop/purge Supra's LSRs in the same manner in which BellSouth drops/purges its own electronically submitted service orders;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XXI

(The FPSC violated the 1996 Act by failing to require BellSouth to provide Supra with completion notices for manual orders in a manner similar to those of BellSouth)

144. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

145. The 1996 Act requires BellSouth to provide CLECs with access to BellSouth's OSS in a non-discriminatory fashion.

146. The FPSC's decision and the Current Agreement fail to require BellSouth to provide Supra with completion notices for manual orders in the same manner BellSouth provides itself with completion notices in all cases. This finding was contrary to the 1996 Act and BellSouth's duty to provide non-discriminatory access.

147. Thus, the FPSC's decision and the Current Agreement violate the interconnection requirements of the 1996 Act and the FCC's implementation orders and regulations. Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by failing to require BellSouth to provide Supra with completion notices for manual orders in a manner similar to those of BellSouth;

- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XXII

(The FPSC violated the 1996 Act by refusing to include a provision in the Current Agreement preserving Supra's right to seek damages from BellSouth for breach of the agreement)

148. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

149. The FPSC must decide all open issues. As one of the open issues, Supra placed the issue of damages before the FPSC at arbitration.

150. Federal law empowers the FPSC to include a provision -- during the arbitration phase for a new interconnection agreement -- allowing the parties to receive damages for breach of an interconnection agreement.

151. However, the FPSC denied Supra's request to include this provision in the Current Agreement. The FPSC cited sections 251 and 252 of the 1996 Act as authority for its denial of Supra's request, but did not cite to *what part of* sections 251 and 252 prevent Supra from seeking damages in the event of a breach by BellSouth.

152. Therefore, the FPSC decision is contrary to the 1996 Act and the FCC's implementation orders and regulations. Supra has been aggrieved by the FPSC's decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by refusing to include a provision in the Current Agreement preserving Supra's right to seek damages from BellSouth for breach of the interconnection agreement;

- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XXIII

(The FPSC violated the 1996 Act by refusing to include a provision in the Current Agreement preserving Supra's right to seek specific performance by BellSouth for breach of the agreement)

153. Supra realleges and incorporates the allegations in paragraphs 1 through 34 above as if set forth in full herein.

154. The FPSC must decide all open issues. Supra properly placed its claim for specific performance in the arbitration as an open issue.

155. State law allows for specific performance under certain circumstances. However, Federal law empowers the FPSC to include a provision – during the arbitration phase for a new interconnection agreement – that allows the parties to seek specific performance for any breach of an interconnection agreement. This would allow Supra to obtain specific performance without the necessity of showing an inadequate remedy or any other requirement imposed by common law. Interconnection Agreements are supposed to incorporate the rights and duties required by federal law. Given the heavy dependence by CLEC upon ILECs in order to simply conduct business, interconnection agreements should expressly allow for specific performance.

156. However, the FPSC denied Supra's request to include this provision in the Current Agreement. The FPSC cited sections 251 and 252 of the 1996 Act as authority for its denial of Supra's request, but failed to cite *what part of* sections 251 and 252 prevent Supra from seeking specific performance in the event of a breach by BellSouth.

157. Therefore, the FPSC's decision is contrary to the 1996 Act and the FCC's implementation orders and regulations. Supra has been aggrieved by the FPSC's

decision and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by refusing to include a provision in the Current Agreement preserving Supra's right to seek specific performance by BellSouth for breach of the interconnection agreement;
- b. Reform the Current Agreement or order the FPSC to reform the Current Agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XXIV

(The FPSC violated the 1996 Act by ruling on issues outside its realm of authority)

158. Supra realleges and incorporates the allegations in paragraphs 1 through 33 above as if set forth in full herein.

159. Once the FPSC approves an interconnection agreement, it is no longer obligated to perform any further duties. Further, after such approval, the FPSC is not authorized to adjudicate disputes arising out of previously approved interconnection agreements.

160. Nevertheless the FPSC ruled in essence, that all disputes under interconnection agreement should be brought to the FPSC for resolution.

161. The FPSC's decision that it has jurisdiction to adjudicate "all" disputes arising out of or related to the new interconnection agreement was improper and is in violation of the 1996 Act.

162. As a result, Supra has been aggrieved by the FPSC's decision as set forth above and is entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC violated the 1996 Act by ruling on issues outside its realm of authority;
- b. Reform the interconnection agreement or order the FPSC to reform the interconnection agreement consistent with the 1996 Act, the FCC's implementation orders and regulations, and the decision of this Court; and
- c. Award Supra such other and further relief as this Court deems just and proper.

COUNT XXV
(Violation of 42 U.S.C. § 1983)

163. Supra realleges and incorporates by reference the allegations of paragraphs 1 through 33 above as if set forth in full herein.

164. During the process of negotiating and arbitrating the new interconnection agreement, the FPSC deprived Supra of its right to procedural due process and equal protection under the Fifth and Fourteenth Amendments of the United States Constitution.

165. The FPSC has a duty to conduct quasi-judicial proceedings filed by telecommunications providers pursuant to Chapter 364 of the Florida Statutes.

166. On August 9, 2000, BellSouth filed a complaint with the FPSC seeking to resolve a billing dispute with Supra. The FPSC commission docket number assigned to BellSouth's complaint was 001097-TP ("BellSouth's First Complaint").

167. On September 1, 2000, BellSouth filed a second complaint with the FPSC seeking to arbitrate certain issues in a follow-on interconnection agreement between the BellSouth and Supra pursuant to 47 U.S.C. § 252(b). The FPSC commission docket number assigned to BellSouth's second complaint was 001305-TP ("BellSouth's Second Complaint").

168. On May 2, 2001, on the eve of the evidentiary hearing for BellSouth's First Complaint, the FPSC's Supervisor for Carrier Services, Ms. Kim Logue, provided *BellSouth's* Director of Regulatory Affairs, Ms. Nancy Sims, with cross-examination

questions that would be asked of both BellSouth and Supra witnesses at the next day's evidentiary hearing.

169. Supra was not advised of this incident at the time. In fact, Supra was not advised of this incident by either BellSouth or the FPSC until five (5) months later, after the evidentiary hearings on both BellSouth complaints had taken place.

170. On July 31, 2001, the Commission unanimously voted for and entered a final order on BellSouth's First Complaint, which denied Supra any credits.

171. On August 18, 2001, Supra filed a motion for reconsideration of the final order and, on September 20, 2001, the FPSC's staff filed a recommendation denying Supra's Motion for Reconsideration.

172. On August 20, 2001, the Assistant Director for the FPSC's Division of Competitive Markets and Enforcement, Ms. Beth Salak, was informed by a confidential source that Ms. Logue had sent cross-examination questions to BellSouth.

173. On that same day, the FPSC's Division of Competitive Markets and Enforcement called a meeting to discuss the issue of ethically dealing with regulated companies.

174. Ms. Salak informed both the Director of the FPSC's Division of Competitive Markets and Enforcement, Mr. Walter D'Haeseleer, and the Bureau Chief for the FPSC's Division of Market Development, Ms. Sally Simmons, of Ms. Logue's actions. Mr. D'Haeseleer then informed the Deputy Executive Director of the FPSC, Ms. Mary Bane, of Ms. Logue's actions.

175. Mr. D'Haeseleer wanted to handle the situation without disclosing the incident to Supra.

176. Ms. Bane asked Ms. Salak to conduct a search of Ms. Logue's computer e-mails from November 2000 forward.

177. On September 6, 2001, Ms. Salak put in an initial request for a CD-ROM of Ms. Logue's e-mails to the FPSC's Systems Project Administrator, Ms. Karen Dockham.

178. On September 12, 2001, Ms. Dockham provided Ms. Salak with the requested CD-ROM.

179. Notwithstanding this internal investigation, on September 20, 2001, the FPSC's telecommunications and legal staff filed a recommendation on BellSouth's First Complaint, recommending a denial of Supra's motion for reconsideration.

180. On that same day, Ms. Dockham provided Ms. Salak with a second CD-ROM containing a second batch of Ms. Logue e-mails.

181. On September 21, 2001, a meeting took place between Ms Bane, Mr. D'Haeseleer, Ms. Salak, and Ms. Simmons regarding Ms. Logue.

182. Regarding the handling of the incident, Mr. D'Haeseleer and Ms. Salak told Mr. John Grayson, the FPSC's Inspector General that they wanted to handle Ms. Logue's actions internally with the goal of minimizing the damage.

183. Although the evidentiary hearing on BellSouth's Second Complaint was scheduled for the following week, Supra would not be notified of Ms. Logue's actions until after the close of the evidentiary hearing -- fourteen (14) days later.

184. Regarding the handling of Ms. Logue, Ms. Logue was expected to resign if her armed services active duty orders were not submitted to the FPSC by October 10th or 12th, 2001.

185. Notwithstanding, Ms. Logue continued to act in the same supervisory capacity as she had been on all her dockets -- including the Docket for BellSouth's Second Complaint -- despite the decisions made during the September 21, 2001 meeting.

186. Allowing Ms. Logue to continue to act in the same capacity on all of her dockets -- including the Docket for BellSouth's Second Complaint -- was contrary to the publicly quoted comments of Mr. Grayson, FPSC's Inspector General. John Grayson was quoted by the South Florida Business Journal, on June 7, 2002, as stating the following: "For a while it was a mistake that happened -- no damage was done, it was going to be handled internally," Grayson recalled Simmons saying [during her interview]. "After that [Sept. 21st] meeting, it appears there was a heightened level of importance, which is what she [Simmons] is telling me." (Bold and underline added for emphasis).

187. Despite the heightened level of importance felt by the participants in the September 21, 2001 meeting, Ms. Logue was not reassigned or removed from any of her responsibilities and Supra was not notified of Ms. Logue's actions until October 5, 2001.

188. Ms. Bane had the authority to decide whether, and if so, when to notify Supra and was acting under color of state law.

189. If Ms. Bane notified any of the Commissioners of Ms. Logue's actions prior to the evidentiary hearing on BellSouth's Second Complaint, then any such official would also be guilty, in their individual capacity, of affirmatively acting to deprive Supra of its federally-protected constitutional rights.

190. On or about October 11th and 12th 2001, Chairwoman Lila A. Jaber was asked to intervene with Joe Lacher, President, BellSouth Florida - over the objections of Nancy White (BellSouth's General Counsel) - regarding the parties' first proceeding - still pending before the Commission at the time.

191. Supra's procedural due process and equal protections rights were again deprived on October 29, 2001 when, over one month after the evidentiary hearing on BellSouth's Second Complaint, the FPSC's lead staff attorney, Wayne Knight, initiated a communication with BellSouth's legal counsel, Mr. Twomey, for the purpose of informing

Mr. Twomey that BellSouth had failed to meet a substantive deadline for including a position for Issue B in its post-hearing brief.

192. BellSouth's omission was significant because Issue B was one of Supra's most important issues and because it dealt with whether BellSouth's standard agreement or the Prior Agreement would be the starting point for all revisions.

193. Since the inception of both of BellSouth's complaints, the FPSC staff has demonstrated a bias in favor of BellSouth; and in fact has actively assisted BellSouth in violation of its duty to remain impartial. An example, of many, is an e-mail between Wayne Knight passing on a message to other FPSC staff members, including Kim Logue on 1/31/01: "Just letting you know of the latest from our dear friends at Supra." Ms. Logue responds to Wayne Knight asking: "have you advised Nancy White [BellSouth's General Counsel] at Bell? She's going to be livid. . . Well, they've got chutzpah, if nothing else." Wayne Knight responds to Kim Logue stating as follows: "Spoke to Nancy [White] on Thursday at the Communications Symposium. She said she anticipated them doing something like that. She wanted to know what we [FPSC] were going to do about it." Despite this communication, and many others like it, the Commissioners decided that the communications between the FPSC staff and BellSouth were appropriate.

194. Ms. Bane, individually, and the FPSC acted with actual intent to deprive Supra of its constitutional rights and/or with reckless and callous indifference to Supra's constitutional rights.

195. The conduct complained of herein is causally connected to the deprivation of Supra's federally-protected rights and Supra has suffered damages as a direct and proximate result of Defendants' actions.

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that Ms. Bane and/or the FPSC violated Supra's constitutional rights;
- b. Grant equitable relief by requiring the FPSC to provide a new hearing, declaring the follow-on agreement void and reinstating the prior interconnection agreement pending a new hearing;
- c. Award Supra compensatory damages, punitive damages, attorneys fees and costs pursuant to 42 USC 1988;
- d. Award Supra such other and further relief as this Court deems just and proper.

COUNT XXVI
(Common Law Conspiracy)

196. Supra realleges and incorporates by reference the allegations of paragraphs 1 through 33 and 164 through 195 above as if set forth in full herein.

197. The FPSC and BellSouth conspired to conceal information from Supra, including but not limited to the fact that Ms. Kim Logue sent cross-examination questions to BellSouth, until after the close of the evidentiary hearing on BellSouth's Second Complaint. Thereby depriving Supra of its federally-protected right to procedural due process and equal protection under the Fifth and Fourteenth Amendments of the United States Constitution. Also, the FPSC staff has demonstrated a bias in favor of BellSouth.

198. On or before September 21, 2001, Ms. Bane had a conversation with Mr. Criser, BellSouth's Vice-President of Regulatory Affairs, wherein they discussed Ms. Logue's actions.

199. The evidentiary hearing on BellSouth's Second Complaint was held on September 26 and 27, 2001.

200. Mr. Criser is the BellSouth official who had the authority to decide whether to notify Supra of Mr. Logue's actions. Further, BellSouth's Director of Regulatory Affairs, Ms. Nancy Sims, chose to withhold this information from Supra.

201. Mr. Criser had actual knowledge of Ms. Logue's actions on or before September 21, 2001 – the day he spoke with Ms. Bane.

202. The FPSC and BellSouth through their respective officials chose to conceal this information from Supra until after the close of the evidentiary hearing on BellSouth's Second Complaint. As a result, both the FPSC's and BellSouth's affirmative actions deprived Supra of its federally-protected rights.

203. The conspiracy to conceal this information from Supra until after the close of the evidentiary hearing also included an agreement to conceal when Ms. Logue's actions came to the attention of FPSC officials.

204. On September 21, 2001, the aforementioned meeting between Ms. Bane, Mr. D'Haeseleer, Ms. Salak, and Ms. Simmons took place.

205. On October 5, 2001, after the evidentiary hearings on both BellSouth complaints, Mr. Harold McLean, General Counsel for the FPSC, sent a letter to Supra officially notifying Supra of Ms. Logue's actions. In that October 5 letter, there was no mention of when Ms. Logue's actions were first discovered – despite the FPSC's and BellSouth's actual knowledge that Ms. Logue's actions were uncovered well in advance of the evidentiary hearing on BellSouth's Second Complaint.

206. Supra did not discover the fact that both the FPSC and BellSouth had actual knowledge of Ms. Logue's actions prior to the evidentiary hearing until March 2002.

207. Supra has suffered damages as a direct and proximate result of Defendants' conspiratorial actions which had the effect and intent of denying Supra its constitutional rights.

208. Moreover, the FPSC, BellSouth, and Ms. Bane acted with actual intent and/or with reckless and callous indifference to Supra's constitutional rights.

WHEREFORE, Supra respectfully requests that this Court:

- a. Declare that the FPSC and BellSouth conspired to conceal information and did violate Supra's rights.
- b. Grant equitable relief by requiring the FPSC to provide a new hearing, declaring the follow-on agreement void and reinstating the prior interconnection agreement pending a new hearing;
- c. Award Supra compensatory damages, punitive damages, attorneys fees and costs pursuant to 42 USC 1988, as against the FPSC and BellSouth;
- d. Award Supra such other and further relief as this Court deems just and proper.

COUNT XXVII
(Declaratory Relief)

209. Supra realleges and incorporates by reference the allegations of paragraphs 1 through 33 above as if set forth in full herein.

210. This is an action for declaratory and other relief pursuant to 28 U.S.C. §§ 2201, 2202.

211. The parties have entered into two interconnection agreements. One was effectuated back in October 1999 (the "Prior Agreement") and the other is the current interconnection agreement that is the subject of Counts I-XXV above (i.e., the Current Agreement). The Prior Agreement was an agreement that Supra opted into pursuant to 47 U.S.C. § 252(i) and which adopted all of the terms and conditions of a then-existing agreement between BellSouth and AT&T Communications of the Southern States, Inc.

212. Section 2.1 of the General Terms and Conditions ("GTC") of the Prior Agreement provided that the agreement would expire three (3) years after the effective date thereof. Section 2.2 of the GTC stated that the parties would commence negotiations toward a follow-on agreement (i.e., the Current Agreement) no later than 180 days prior to the expiration date of the Prior Agreement. Section 2.3 of the GTC also contained an "evergreen provision" which stated that until the new agreement became effective, BellSouth would continue to provide services and elements pursuant to the terms,

conditions and prices that are in effect under the Prior Agreement. Thus, notwithstanding any purported expiration date, the Prior Agreement continued to be in full force and effect until such time as the new agreement became effective.

213. Section 16.1 of the GTC stated that disputes between the parties that arose under the Prior Agreement were to be resolved through either voluntary negotiations between the two companies or arbitration before the CPR Institute for Dispute Resolution ("CPR"), and in accordance with the Federal Arbitration Act (9 U.S.C. § 1, et seq.). Thus, any dispute over when and how the Prior Agreement finally terminated could only be decided by a panel of commercial arbitrators in accordance with the CPR rules and the Federal Arbitration Act.

214. Although the Prior Agreement was a product of the procedures set forth in 47 U.S.C. § 252, both the evergreen provision and the arbitration provisions were products of voluntary negotiations. Thus, both BellSouth and Supra had voluntarily agreed to be bound by both provisions found in the Prior Agreement.

215. At the time, the Prior Agreement was the main asset of Supra and allowed Supra to operate and provide telecommunications services to end-users within the BellSouth service areas in the State of Florida. Virtually all of Supra's approximately 300,000 customers were provided telecommunications service under the Prior Agreement. Thus, the Prior Agreement was a valuable property right and interest of Supra and was the most important item of business property owned by Supra.

216. Notwithstanding the negotiated provisions of the Prior Agreement, on July 25, 2002, the staff of the FPSC filed a recommendation with the FPSC recommending that the FPSC grant BellSouth's request to declare the Prior Agreement terminated as of August 16, 2002. The recommendation also stated that if Supra did not execute either the Current Agreement or another approved agreement available for adoption under 47

U.S.C. § 252(i), that the relationship between BellSouth and Supra would terminate. A copy of the staff recommendation is attached to the original complaint as Exhibit "A."

217. On August 6, 2002, the FPSC voted to adopt the staff recommendation. The adoption of the staff recommendation constituted action by the FPSC and the State of Florida through the FPSC. A copy of the FPSC's order is attached to the original complaint as Exhibit "B."

218. The FPSC's order effectively terminated the Prior Agreement between BellSouth and Supra. However, the Prior Agreement, specifically required BellSouth and Supra to arbitrate any alleged declaration of termination of the Prior Agreement. A copy of the arbitration provision from the Prior Agreement is attached to the original complaint as Exhibit "C."

219. Neither the FPSC nor BellSouth has ever brought a proceeding under the Prior Agreement seeking to have it declared terminated and Supra has not and does not waive its rights to have any dispute under the Prior Agreement resolved by a panel of arbitrators as required by the agreement.

220. This action involves an actual controversy in which the FPSC has taken actions in violation of the Contracts Clause, the 14th Amendment of the United States Constitution, Federal Arbitration Act and the 1996 Act. Specifically, Supra is requesting that this Court take jurisdiction over this controversy and, pursuant to 28 U.S.C. § 2201, make a declaration with respect to the following controversies:

- a) What is the proper procedure for BellSouth and Supra to follow during a post-evidentiary hearing period, and specifically, whether the FPSC is required to hold a further evidentiary hearing on the issues that were previously-resolved through the parties' voluntary negotiations (and thus, withdrawn from consideration during the evidentiary hearing on BellSouth's Second Complaint), but where the agreement does not reflect those voluntary agreements;
- b) Whether the FPSC had the authority to declare the Prior Agreement null and void (which contained an exclusive arbitration provision

requiring a panel of arbitrators to decide if, when and how the Prior Agreement terminated);

- c) Whether the FPSC's determination that the Prior Agreement terminated on August 16, 2002 was an impairment and a deprivation of valuable property rights owned by Supra without due process of law and, thus, a violation of Article I, Section 10, of the United States Constitution (which prohibits states from impairing contract obligations);
- d) Whether the FPSC's determination that the Prior Agreement terminated on August 16, 2002 was an impairment and a deprivation of valuable property rights owned by Supra without due process of law and, thus, a violation of Amendment XIV, Section 1, to the United States Constitution (which prohibits states from depriving persons of property without due process of law); and
- e) Whether the FPSC's determination that the Prior Agreement terminated on August 16, 2002, without allowing the parties to arbitrate the termination issue, was in violation of the Federal Arbitration Act.

221. Pursuant to 28 U.S.C. § 2202, Supra respectfully requests that this Court take any such further action that may be necessary and/or proper based upon any declaratory judgment or decree that may be granted by this Court.

WHEREFORE, Supra respectfully requests that this Court take jurisdiction over this cause, and enter judgment as follows:

- a) The 1996 Act requires the FPSC to conduct a further evidentiary hearing on all issues presented in the petition and response as to which there was no evidentiary hearing by the FPSC and which remain unresolved by the parties.
- b) The 1996 Act grants no authority to the FPSC to declare the Prior Agreement null and void in contravention to the plain language of the Prior Agreement (which contains an exclusive arbitration provision requiring a panel of arbitrators to decide if, when and how the Prior Agreement terminates);
- c) The FPSC's determination that the Prior Agreement terminated on August 16, 2002 is an impairment and a deprivation of valuable property rights owned by Supra without due process of law and, thus a violation of Article I, Section 10, of the United States Constitution;
- d) The FPSC's determination that the Prior Agreement will terminate on August 16, 2002 is an impairment and a deprivation of valuable property rights owned by Supra without due process of law and, thus a violation of Amendment XIV, Section 1, to the United States Constitution; and

- e) The FPSC's determination that the Prior Agreement terminated on August 16, 2002, is in violation of the Federal Arbitration Act;

and any other relief this Court deems just and proper under the circumstances.

JURY TRIAL DEMANDED

Supra hereby demands a jury trial on all issues herein so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Complaint was served by ~~facsimile~~ and U.S. Mail on all persons listed on the following:

Attorneys for Defendant BellSouth Telecommunications, Inc.:

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Attorney for Defendant Commissioners of the Florida Public Service Commission:

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This 23RD day of September, 2002.

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By: _____

Mark E. Buechele
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CERTIFICATE OF SERVICE

I do hereby certify that I have this 3rd day of October 2002 served the following parties to this action with a copy of the foregoing **LETTER** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed below.

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Juanita H. Lee

+ VIA ELECTRONIC FILING